

REMARKS

The above Amendments and these Remarks are in reply to the Office Action mailed April 5, 2005.

Currently, claims 1-12, 14-17, 22, 24-26, 30-32, 41, 43, 48-52, 56, 58, 62, 68, 71, 72, 75, 77, and 80-81 are pending.

I. Allowed Claims

In the Office Action dated April 5, 2005, the Examiner indicated that claims 1-12, 58, 72, 75, and 77 were allowed.

The Examiner also indicated that claims 14, 22, 24-26, 30-32, 41, 43, 48-51, 68, 71 were objected to as being based on rejected claims, but otherwise contained allowable subject matter. Thus, these claims have been amended to include limitations from the base claims. For example, claim 14 was amended to add limitations from claim 13. Claims 22 and 24-26 depend from claim 14. Claims 30-32 were amended to add limitations from claim 13. Claim 43 was amended to add limitations from claim 39. Claim 42 depends from claim 43. Claims 50-51 were amended to add limitations from claim 45, and claims 48-49 depend from claim 50. Claims 68 and 71 were amended to add limitations from claim 64. Therefore, Applicant asserts that claims 14, 22, 24-26, 30-32, 41, 43, 48-51, 68, and 70-71 are in condition for allowance.

Claim 52 was rejected by the Examiner. Applicant has amended claim 52 to substantially include the limitations of claim 1, which the Examiner has allowed. Claims 56 and 80-81 depend from claim 56.

Other claims have been rejected by the Examiner. Applicant is canceling the rejected claims to allow the present application to issue in a timely manner. Applicant reserves the right to re-file the cancelled claims in a continuation application.

II. Previous Response and Telephone Conference

Applicant had filed an amendment on June 22, 2005, similar to the present amendment. In an Advisory Action, the Examiner indicated that the amendment filed on June 22, 2005 would not be entered. During a telephone conference on August 5, 2005 between Examiner Bonzo and

Applicant's undersigned attorney, the Examiner indicated that claim 14 had an error ("first" should be changed to "particular") and claim 56 was rejected. The Examiner also informed Applicant that a new prior art reference U.S. Patent 6,021,272 was found. The Examiner indicated that most pending claims were still allowable, for example, claim 14, claim 43, and the claims objected to in the Office Action dated 9/08/2004 were still allowable. However, the Examiner questioned whether claim 1 was still allowable in light of U.S. Patent 6,021,272 in combination with U.S. Patent Application 2002/0162053.

III. Prior Art

As stated above, the Examiner questioned whether claim 1 was still allowable in light of U.S. Patent 6,021,272 ("Cahill") in combination with U.S. Patent Application 2002/0162053 ("Os"). Because neither prior art reference, alone or in combination, teaches or suggests all of the limitations of claim 1, Applicant asserts that claim 1 is in condition for allowance.

Cahill discloses a "system for transforming and manipulating program object code." [Cahill, Abstract]. In the system taught by Cahill:

A set of program object code is transformed into a form in which it may be readily manipulated, preferably a form which is independent of both the processor hardware (processor independent) and the operating system with which the object code will execute (operating system independent). The transformed object code is manipulated, preferably to add calls to error-checking instructions, but possibly to add other functions or to alter the functions of the object code. The manipulated code is then reverse-transformed to program object code of the same type as the original object code. [Cahill, col. 3, lines 6-16].

An example of an error checking function disclosed by Cahill includes checking for "memory access errors." [Cahill, col. 10, line 62].

Although Cahill discloses the manipulation of object code to add functionality to check for memory access errors, Cahill does not teach or suggest "using said new code and said changed existing code to determine if said first routine has stalled."

Os discloses a Check Alive Thread [see Os, Fig. 1 and ¶¶00023, 27 and 28] to “detect when the target application has hung, i.e., become non-responsive to user input.” [Os, ¶00023]. Os also discloses that when “a process is started on the user machine, the agent ‘hooks’ (installs code realizing an application hook for) that process.” [Os, ¶00023]. While Os, therefore, does disclose adding new code, Os does not disclose changing existing code. Since Os does not disclose changing existing code, Os does not disclose “using ... said changed existing code to determine if said first routine has stalled” as recited in claim 1.

One of ordinary skill in the art would not be motivated to combine Cahill with Os because the two references teach away from each other. For example, Cahill teaches the modification of existing code to add new functionality. On the other hand, Os teaches the use of hooks to add new functionality. These are two different methods to add new function. Thus, the two prior art references teach different approaches to adding new function. A system that uses hooks, may not need to use code modification. Evidence of this can be inferred from the fact that technology for modifying object code has been known well before the filing date of Os. For example, in an IDS submitted with this Response C, Applicant is citing U.S. Patent 5,193,180 (“Hastings”), which disclosed the use of code modification as early as 1993. Applicant also cited various publications which also disclose code modification prior to the filing date of Os. Thus, code modification technology was available to Os; however, Os chose a different route. Rather than incorporating code modification, Os implemented the use of hooks. Thus, Applicant asserts that one of ordinary skill in the art would not be motivated to combine the teachings of Cahill and Os, as suggested by the Examiner.

Even if Cahill and Os are combined, the proposed combination still does not teach or suggest “using ... said changed existing code to determine if said first routine has stalled” as recited in claim 1. Os does not use changed existing code to determine if a routine has stalled. Cahill also does not use the changed existing code to determine if a routine has stalled. Therefore, the combined teachings of the two references also does not use changed existing code to determine if a routine has stalled.

For all of these reasons, Applicant asserts that claim 1 and the claims depending from claim 1 are patentable over the cited prior art. The same reasoning discussed above also applies to the others claims that contain similar limitations to claim 1.

IV. Conclusion

Based on the above amendments and these remarks, reconsideration of claims 1-12, 14-17, 20-22, 24-26, 30-32, 41, 43, 48-52, 56, 58, 62, 68, 71, 72, 75, 77, and 80-81 is respectfully requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date:

September 6, 2005

By:

Burt Magen
Burt Magen
Reg. No. 37,175

VIERRA MAGEN MARCUS HARMON & DENIRO LLP
685 Market Street, Suite 540
San Francisco, California 94105-4206
Telephone: (415) 369-9660
Facsimile: (415) 369-9665